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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 JOAQUIN MURRIETTA MARTINEZ,
12 Petitioner,

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14 v.

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16 CAPT. PENA,

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18 Respondent.
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Civil No. 14-1832 LAB (BLM)

**ORDER: (1) CONSTRUING
PETITION [ECF No. 1] AS A
MOTION TO AMEND IN CASE
No. 13CV1457 BTM (WVG);**

**(2) DIRECTING CLERK TO FILE
PETITION [ECF No. 1] AS A
MOTION TO AMEND IN CASE
No. 13CV1457 BTM (WVG) AND
TO CLOSE THIS CASE; and**

**(3) DENYING MOTION TO
PROCEED IN FORMA PAUPERIS
[ECF No. 2] AS MOOT**

21 Petitioner, a state prisoner proceeding pro se, has filed a Petition for Writ of
22 Habeas Corpus pursuant to 28 U.S.C. § 2254 together with a motion to proceed in forma
23 pauperis. In his petition, Petitioner challenges his May 10, 2010 conviction in San Diego
24 Superior Court case number 246872. (*See* Pet. at 1, ECF No. 1.)

25 Petitioner is already challenging his May 10, 2010 conviction in San Diego
26 Superior Court case number 246872 in this Court in case number 13cv1457 BTM
27 (WVG). (*See* So. Cal. Dist. Ct. Case No. 13cv1457 BTM (WVG), ECF No 1.) In that
28 case, a Report and Recommendation was filed on May 20, 2014, and it is currently

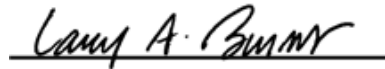
1 before the District Judge assigned to the case for disposition on the Report and
2 Recommendation. (See ECF No. 33.) In *Woods v. Carey*, 525 F.3d 886 (9th Cir. 2008),
3 the Ninth Circuit stated that “where a new *pro se* petition is filed before the adjudication
4 of a prior petition is complete, the new petition should be construed as a motion to
5 amend the pending petition rather than a successive application.” *Id.* at 888.

6 **CONCLUSION**

7 Accordingly, the Court **CONSTRUES** the petition in this case [ECF No. 1] as a
8 motion to amend the petition in case no. 13cv1457 BTM (WVG) and **DIRECTS** the
9 Clerk of Court to file the petition in this case [ECF No. 1] as a motion to amend in case
10 no. 13cv1457. The Clerk of Court is also **DIRECTED** to close this case. The motion
11 to proceed in forma pauperis is **DENIED** as moot.

12 **IT IS SO ORDERED.**

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14 DATED: August 15, 2014

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16 **HONORABLE LARRY ALAN BURNS**
17 United States District Judge
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